

**MEMORANDUM OF UNDERSTANDING**  
**between**  
**THE SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES**  
**and**  
**THE SOUTH DAKOTA DEPARTMENT OF EDUCATION**  
**2005**

**1.0 Parties:**

This Memorandum of Understanding (MOU) is between the Department of Education, hereinafter referred to as "Education" and the Department of Social Services hereinafter referred to as "Social Services."

**2.0 Objective:**

The objectives of the MOU are to establish a framework for local education agencies to seek reimbursement for Medicaid eligible children receiving a medically necessary covered service and to outline the coordination between these agencies as agreed upon by the directors of the respective divisions and programs.

Activities under the MOU shall be performed in accordance with South Dakota law, Administrative Rules of South Dakota governing the Medicaid Program, Title XIX of the Social Security Act, and in conformity with regulations promulgated by the U.S. Department of Health and Human Services (HHS) or Social Services.

**3.0 Responsibilities and Coordination of Services Procedures:**

Each agency will identify personnel at the state level responsible for liaison with the other agency. Designated personnel will recommend operational procedures and priorities defining services, and scope. Liaison staff will resolve problems or issues in accordance with the dispute resolution process outlined in this MOU. The liaison staff will recommend necessary policy to carry out the terms of this MOU.

Education will assume the responsibility for notifying local school districts of the content of this agreement, as well as assist and provide consultation to units in developing needed procedures or mechanisms to carry out the terms of this MOU. Education agrees to encourage the enrollment of school districts as Medicaid providers through the dissemination of this MOU and through written materials communicated to the districts.

Education will be responsible for the state or local funds required to match the federal Medicaid funds.

Social Services will continue to provide instructions and technical assistance through scheduled provider training sessions to school districts. Social Services will be responsible to determine recipient eligibility for the Medicaid Program.

A joint review panel, comprised of staff from Education and Social Services, will meet on an annual basis to review the rates of reimbursement for school districts. The director Special Education Programs and the director of the Office of Medical Services will identify the members of the review panel.

A school district may use the Medicaid benefits to provide for or pay for services required to ensure a free appropriate public education (FAPE). School districts may not require parents to sign up for or enroll in the Medicaid program in order for their child to receive FAPE under Part B of the IDEIA. They may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services. They may not use a child's benefits if that use will decrease available lifetime coverage or any other insured benefit. A child's benefits may not be used if it will result in the family paying for services that would otherwise be covered by the public insurance program and that are required outside of the time the child is in school. It may not be used if it will increase the premiums or lead to the discontinuation of insurance, or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

#### 4.0 Definitions:

- (1) "Cooperative Educational Service Unit (Co-op)"- a unit created by two or more school districts meeting the standards of SDCL 13-5-31 Cooperative educational service units.
- (2) "Covered Service"- services which meet the requirements of proposed ARSD 67:16:37 School districts.
- (3) "Department of Social Services"- the agency who administers the South Dakota Medicaid Program.
- (4) "Department of Education"- the agency responsible for administering special education programs.
- (5) "Local Education Agency"- an agency approved or accredited by the South Dakota Board of Education.
- (6) "School District"- a local education agency or a Co-op which meets the standards of ARSD 67:16:37 School districts.
- (7) "Federal Financial Participation (FFP)"- the federal share of costs.
- (8) "FAPE"- free appropriate public education.
- (9) "IDEIA"- Individuals with Disabilities Education Improvement Act of 2004.

#### 5.0 Conditions and Terms of Reimbursement:

Payment for services provided by the school district are in accordance with ARSD 67:16:37 School districts and shall be limited to the FFP portion of the established rate for the service provided.

6.0 Certification of Match:

The submission of a claim by a school district in accordance with ARSD Article 67:16 Covered Medical Services shall act as certification that the required expenditure of local matching funds as per 42 CFR 433.51 Public funds as the State share of financial participation has occurred.

7.0 Dispute Resolution:

During the pendency of the dispute resolution procedures described herein, Education will ensure that services required to provide free appropriate public education (FAPE) will continue. Disputed service(s) currently being provided will continue until the outcome of the dispute resolution process. The implementation of disputed service(s) not previously provided will be pursuant to a decision through the described resolution process.

1. All attempts will be made to resolve disputes at the lowest possible level.
2. When disputes cannot be resolved by designated department representatives, a written explanation of the dispute will be sent to the Director of Special Education, Special Education Programs and the Director of the Office of Medical Services. These individuals, in consultation with each other, shall review the issues and make a determination as to how the dispute should be resolved. The decision will be shared in writing with each level involved within twenty (20) calendar days of receipt of request for the determination and will include reasons for the decision. If they are unable to reach resolution, they will refer the issue to the Secretary of the Department of Education and the Secretary of the Department of Social Services.
3. If a resolution is not obtained by the Director of Special Education Programs and Director of the Office of Medical Services, the Secretary of the Department of Education and the Secretary of the Department of Social Services will jointly make a final determination with 30 calendar days.

8.0 Arrangements for periodic review of the MOU:

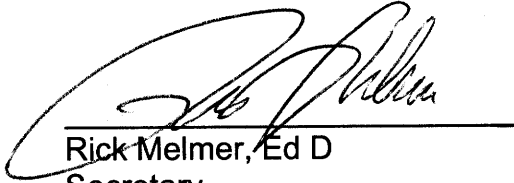
This MOU shall be reviewed at least every three years and evaluated as to the need for modifications or amendments by mutual determination of the involved agencies.

9.0 Termination:

This MOU may be voluntarily terminated by either agency by giving 30 days written notice to the other party. In the event the federal and/or state laws should be amended so as to render the fulfillment of the MOU not feasible, both Social Services and Education shall be discharged from further obligation created under the terms of this agreement.

The terms of this memorandum of understanding (MOU) shall begin on this 22<sup>nd</sup> day of June, 2005 and shall remain in effect until modifications are deemed necessary and mutually acceptable changes are negotiated.

Agreed to this 22 day of June, 2005.



Rick Melmer, Ed D  
Secretary,  
Department of Education



Deborah Bowman  
Secretary,  
Department of Social Services